EU External Action in International Economic Law

Mads Andenas · Luca Pantaleo · Matthew Happold · Cristina Contartese Editors

EU External Action in International Economic Law

Recent Trends and Developments





Editors
Mads Andenas
Faculty of Law
University of Oslo
Oslo, Norway

Matthew Happold Université du Luxembourg Luxembourg, Luxembourg Luca Pantaleo Department of Political and Social Sciences University of Cagliari Cagliari, Italy

Cristina Contartese Hague University of Applied Sciences The Hague, The Netherlands

ISBN 978-94-6265-390-0 ISBN 978-94-6265-391-7 (eBook) https://doi.org/10.1007/978-94-6265-391-7

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

© T.M.C. ASSER PRESS and the authors 2020

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work. The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

This T.M.C. ASSER PRESS imprint is published by the registered company Springer-Verlag GmbH, DE part of Springer Nature.

The registered company address is: Heidelberger Platz 3, 14197 Berlin, Germany

Contents

•	and the Challenges Posed by the EU's Hybrid Nature	1
2	Emerging Principles of European Investment Protection—After the Example of the Comprehensive Economic and Trade Agreement (CETA)	9
3	Pushing Limits: The Principle of Autonomy in the External Relations Case Law of the European Court of Justice	35
4	The European Parliament's Role in the EU Treaty-Making Procedure from Primary Law to Inter-institutional Agreements and Internal Rules Stefania Lucente	69
5	The European Union's External Trade and Investment Policy Post-Lisbon: Competence, Procedure and Scope of Action	93
6	Investor-State Dispute Settlement: Constitutional Challenges and Pitfalls	121
7	The Consensual Termination of Investment Agreements Between EU Member States	153
8	EU Law as Applicable Law in International Disputes and Its Procedural Implications	173

vi Contents

9	Is CETA the Promised Breakthrough? Interpretation and Evolution of Fair and Equitable Treatment and (Indirect) Expropriation Provisions	193
10	Investor-State Dispute Settlement in EU Trade Agreements in the Light of EU Policy and Law	221
11	The European Union and the Energy Charter Treaty: What Next After Achmea? Matthew Happold and Michael De Boeck	251
12	The International Responsibility of the European Union and of Its Member States for Breaches of Obligations Arising from Investment Agreements: Lex Specialis or European Exceptionalism? Simone Vezzani	281
13	Convergences and Divergences of Commercial and Investment Arbitration Under Achmea (C-284/16)	323